IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.335 OF 1995

Punjab National Bank ...Plaintiffs

V/s.

M/s.Miranda Industries & Ors. ...Defendants

.....

Ms.Nipa Singh i/b Mahesh Menon for Plaintiffs.

None for Defendants.

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CORAM: A.M.KHANWILKAR, J.

JULY 17, 2007.

P.C.

1. This Suit is placed under caption ‘Undefended Suits’ in terms of order dated 13th June 2007 as against Defendant No.4 and Order dated 3rd October 2002 as against Defendants 1, 2 and 3. However, today, when the matter is called out, none appears for any of the Defendants, nor any written statement has been filed on behalf of any of the Defendants. In other words, the Suit is proceeding as undefended Suit against all the Defendants.

2. In substance, the case of the Plaintiffs is that the Plaintiffs granted Term Loan facility to the Defendants to the extent of Rs.60,000/- (Rupees Sixty Thousand), Cash Credit facility to the extent of Rs.70,000/- (Rupees Seventy Thousand) and Clean Demand Draft facility to the extent of Rs.1,00,000/- (Rupees One Lakh). It is stated that the said Clean Demand Draft facility was, however, not availed by the erstwhile proprietary firm of the Defendant No.1 to whom such financial assistance was provided. In the circumstances, Clean Demand Draft facility was revoked and cancelled. Insofar as the Term Loan and Cash Credit facility is concerned, the erstwhile Defendant firm, of which, the erstwhile Defendant No.2 was the sole proprietor, executed Agreements of Hypothecation on 18th December 1989. The Defendants thus created charge in favour of the Plaintiffs of machinery and other securities as described in the Schedule in the said Agreements of Hypothecation. The Defendant No.4, by another Agreement of Guarantee dated 18th December 1989, duly guaranteed to pay to the Plaintiffs the

amounts under the said Banking facility along with interest and costs payable to the Plaintiffs. The guarantee is continuing guarantee which is valid and subsisting. The first Defendant, of which firm, the Defendant No.2 was at the material time, the sole proprietor, inducted the Defendant No.3 in the said firm and converted itself from the proprietary firm into a partnership firm on terms and conditions stipulated in the Deed of Partnership dated 28th June 1991 entered into between 2nd and 3rd Defendants. By an Agreement of Indemnity dated 26th July 1991 entered into between the Plaintiffs and the 2nd and 3rd Defendants, the 2nd and 3rd Defendants recorded the conversion of the erstwhile proprietary firm to the Partnership firm of the 1st Defendant and inter alia took over the liabilities of the erstwhile proprietary firm in respect of the Banking facilities granted by the Plaintiffs to the said erstwhile proprietary firm.

3. The present Suit is in relation to the recovery of the said amount accrued in respect of the Banking Facility granted by the Plaintiffs to the Defendants. The Plaintiffs have asked for

following reliefs:

"(a) that the Defendants Nos.1 to 4 be jointly and severally be ordered and decreed to pay to the Plaintiffs a sum of Rupees 5,35,590.00 as per Particulars of Claim at Exhibit 'H' hereto, along with interests thereon at the rate of 20.25% p.a. from the date of filing the suit till decree and thereafter at the rate of 20.25% p.a. or at such other rate as the Honourable Court deems fit and proper from the date of decree till realisation.

(b) that it be declared that the amounts mentioned in prayer (a) above are validly secured to the Plaintiffs by way of first charge over the hypothecation of the securities mentioned in the Schedule to the Agreement of Hypothecation at Exhibits 'A', 'B' and 'E' hereto;

(c) that the said securities mentioned in the Schedule to the said Agreement of Hypothecation be sold under the order and direction of the Honourable Court and the sale proceeds thereof be paid over to the Plaintiffs towards the satisfaction of the Plaintiffs claim;

(d) In the event of the amounts realised by such a sale being insufficient to satisfy the claim of the Plaintiffs, the personal assets and properties of the Defendants be attached and sold and the sale proceeds thereof be paid over to the Plaintiffs towards the satisfaction of the Plaintiffs' claim;

(e) such further orders and directions as may be necessary in the said connection may be granted by the Court;

(f) that pending the hearing and final disposal of the suit, Defendants Nos.1 to 3, their servants and agents be restrained

by an order and injunction from creating any third party interest of any nature whatsoever in and over the securities mentioned in greater detail in the schedule to the Agreements at Exhibits A, B and E hereto;

(g) Interim and ad-interim injunction in terms of prayers (c), (d), (e) and (f) be granted;

(h) such further and other reliefs be granted as this Honourable Court deems fit and proper;

(i) Cost of the suit be provided for."

4. The question is: whether the Plaintiffs have material to support their claim against the Defendants and if so, what consequence?

5. As mentioned earlier, the Defendants have not filed written statement nor bothered to appear. The Plaintiffs, on the other hand, have filed affidavit of evidence sworn by Mr.A.H.Sikilkar, Senior Manager of the Plaintiffs duly authorised to give evidence before this Court. The Plaintiffs' witness has restated the assertions set out in the Plaint as referred to above. Besides, the Plaintiffs have filed list of documents and tendered original documents on record in support of

their claim. The documents on record substantiate the claim of the Plaintiffs about the financial facilities extended to the Defendants and that the Defendants availed the said facilities. The Plaintiffs have also furnished the extract of the statement of account which confirms the outstanding claim amount. There is nothing to militate against the case made out by the Plaintiffs in relation to the outstanding principal amount payable by the Defendants as also the accrued interest as per the agreed rate. The documents on record would indicate that the rate of interest was agreed interest. Besides, the financial assistance taken is for commercial activity. Obviously, the Defendants have no plausible defence available, for which reason, they have allowed this proceeding to go undefended.

6. As there is nothing on record to doubt the correctness of the stand taken by the Plaintiffs and the claim of the Plaintiffs is supported by the documentary evidence placed on record as well as the affidavit of evidence of the Plaintiffs, the Suit deserves to be decreed in exercise of powers

under Order VIII Rule 10 of the Code of Civil Procedure, in terms of prayer clauses (a) to (d) referred to above.

7. Accordingly, Suit is decreed in terms of prayer clauses (a) to (d) with costs. Decree be drawn up accordingly.

A.M.KHANWILKAR, J.